

THE ESTATE OF MICHAEL STEVEN
EVERHARD BY STEVEN EVERHARD,
EXECUTOR and STEVEN EVERHARD,
MICHAEL A. EVERHARD and AMY
GARDNER, Individually,

Plaintiff(s)

Vs.

TYSON FOODS, INC., TYSON FRESH
MEATS, INC., RICK RETZLAFF,
JORGE SANDOVAL, RANDY WILEY,
TOM BROWER and LAURIE GARCIA,

Defendant(s)

Case No. _____

**PETITION AT LAW AND JURY
DEMAND**

5:21-cv-04002-LRR-KEM

COMES NOW these Plaintiffs and for their cause of action
against the Defendants and each of them state as follows:

1. The Decedent, Michael Steven Everhard, age 65,
passed away on June 18, 2020 as a consequence of workplace exposure
to Covid-19 (Corona Virus) then a resident of the City of Fonda,
Pocahontas County, Iowa.

2. On the date of his demise, Michael Steven Everhard
was survived by three adult children, Michael A. Everhard, Amy
Gardner and Steven Everhard, all residents of the State of Iowa.

3. The Decedent's son, Steven Everhard, is the duly
appointed and acting Executor of the Estate of Michael Steven

Everhard, which estate is currently pending in Pocahontas County, Iowa.

4. Immediately prior to his death on June 18, 2020 and for the previous 27 years Michael Steven Everhard was an employee of Tyson Fresh Meats, Inc. and/or its predecessor Tyson Foods, Inc. at its Storm Lake, Buena Vista County, Iowa plant.

5. Tyson Fresh Meats, Inc. is a Delaware Corporation with its principal place of business in Springdale, Arkansas.

6. Tyson Foods, Inc. is also a Delaware Corporation with its principal place of business in Springdale, Arkansas.

7. Tyson Fresh Meats is the owner and operator of pork and turkey processing plants located in Storm Lake, Buena Vista County, Iowa.

8. Tyson Fresh Meats, Inc. is a wholly owned subsidiary of Tyson Foods, Inc. (hereinafter collectively referred to as Tyson).

9. At all times material hereto Defendant Tom Brower has been the Senior Vice President of Health and Safety for Tyson.

10. At all times material hereto Defendant Rick Retzlaff has been the Storm Lake Tyson Complex Manager (plant manager) and he has resided in Storm Lake, Iowa.

11. At all times material hereto Defendant Jorge Sandoval was the plant Safety Manager for the Storm Lake Tyson Plant and he has resided in Rembrandt, Iowa.

12. At all times material hereto Defendant Randy Wiley was the Decedent's General Supervisor at the Storm Lake Tyson Plant and he has resided in Storm Lake, Iowa.

13. At all times material hereto Defendant Laurie Garcia has been an area Safety Manager for the Storm Lake Tyson Plant and she has resided in Sioux City, Iowa.

FACTS COMMON TO ALL COUNTS

14. In 2019 a contagious disease known as Covid-19 was discovered to exist in the population at large. According to the CDC (Centers for Disease Control) Covid-19 is a contagious disease that is transmitted either by physical contact with contaminated surfaces or by airborne transmission of respiratory droplets from person to person, particularly those in close physical proximity.

15. The U.S. Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020 in response to Covid-19 and on March 9, 2020 the Governor of Iowa issued a Proclamation of Disaster Emergency also in response to Covid-19.

16. On March 9, 2020 the U.S. Department of Labor Occupational Safety and Health Administrator (OSHA) issued a publication entitled "Guidance on preparing Workplaces for Covid-19". The publication provides guidance to employers on how to keep its employees safe from the spread of Covid-19.

17. On March 2, 2020 the Iowa Department of Public Health (IDPH) issued "Covid-19 Guidance for Business" that provided detailed health information and recommendations on how to contain Covid-19 in the workplace. A copy of the publication was provided to the Storm Lake Tyson Plant on March 13, 2020. Periodic updates on measures to control the Covid-19 outbreak were also provided to Tyson by the IDPH.

18. On March 13, 2020 the President of the United States declared the Covid-19 outbreak a national emergency. Also on March 14, 2020 the Governor of Iowa announced that there was a community spread of Covid-19 in the State of Iowa. She also announced school closings and other drastic mitigation measures to contain the spread of the virus.

19. Michael Steven Everhard was hospitalized and formally diagnosed with Covid-19 on or about May 29, 2020.

20. On June 18, 2020 Michael Steven Everhard died from complications of Covid-19.

21. Covid-19 infections were detected among Storm Lake Tyson employees as early as May 1, 2020.

22. Physical proximity by the Decedent with anyone other than his fellow Tyson employees and members of his household were minimal in May and June of 2020.

23. Michael Steven Everhard contracted Covid-19 as a result of exposure to the virus at the Storm Lake Tyson Plant.

24. As early as March and even as early as February of 2020, the fact that Covid-19 was spreading by person-to-person contact and was particularly virulent in the meat packing industry was well known by employers and most certainly by Tyson and its management team.

25. Prior to the Decedent contracting Covid-19, there were virus outbreaks at other Tyson meat packing plants, outbreaks that were so severe that plants were closed.

26. Prior to the Decedent contracting Covid-19, the Defendants and each of them were aware of the factors that would mitigate the spread of the virus such as separation of employees (social distancing), physical barriers between employees, face masks and other PPE, hand sanitizers and reduction in exposure of older employees to the virus.

27. In spite of that awareness, Defendants exposed Decedent to the high risk of contracting the virus by placing him

in a confined work environment less than six feet from other workers without proper barriers between them and without proper PPE and other mitigation factors.

28. At all times material hereto the Defendants and each of them were aware that the working conditions at the Tyson Plant in Storm Lake would expose Michael Steven Everhard to a high risk of contracting Covid-19 for the following reasons:

- A. Decedent routinely worked less than six feet from his fellow employees;
- B. Decedent wasn't provided with proper PPE;
- C. Inadequate physical barriers separated the Decedent from fellow employees;
- D. Inadequate training was provided to plant safety personnel to combat the propagation of Covid-19;
- E. Inadequate sanitizing and disinfectant practices existed at all times material hereto at the Storm Lake Tyson Plant;
- F. Inadequate testing and contact tracing;
- G. Inadequate screening of employees for symptoms of Covid-19;
- H. Failure to comply with State and Federal laws, rules and regulation; and
- I. Failure to slow down or otherwise alter production to mitigate the spread of Covid-19.

29. In spite of the foregoing, Tyson and its managerial employees, including these Defendants, required the Decedent to work in an environment rife with Corona Virus when they knew or should have known that Tyson wasn't implementing the necessary safety precautions available to protect workers and that the risk that Decedent would become infected was very high.

COUNT I.

GROSS NEGLIGENCE

30. The individual Defendants and each of them were co-employees of the Decedent at all times material hereto.

31. The individual Defendants and each of them knew or should have known of the substantial risk of harm to Decedent and that injury and/or death was probable from exposure to Covid-19 in the absence of proper mitigation efforts in the Tyson plant in May and June of 2020, and by their conscious indifference to the warnings and recommendations of the many health organizations, State and Federal agencies were grossly negligent.

32. The conduct of the individual Defendants constituted a wanton and willful disregard for the rights and safety of the Decedent such that each of them was grossly negligent and that their gross negligence was the proximate cause of Decedent's death and the damages arising therefrom.

COUNT II.

NEGLIGENCE - TYSON FRESH MEATS, INC. AND TYSON FOODS, INC.

33. The Decedent was an employee of Tyson Fresh Meats, Inc. at all times material hereto.

34. Tyson has denied that it is liable under Chapter 85 (Iowa Workers Compensation Statutes) and 85A (Occupational Disease Compensation) for employees who have suffered injuries or death as a result of Covid-19 infections that have occurred in the course and scope of workplace exposure to the virus.

35. Under Chapter 85.20 of the Code of Iowa, the employer, Tyson Fresh Meats, Inc. and its parent company Tyson Foods, Inc. would ordinarily be immune from liability at common law or otherwise for injuries or death to its employees arising out of their employment but only if benefits would be recoverable under either Chapter 85 or 85A. If as Tyson alleges the Decedent has no claim for workers' compensation available under the circumstances of his death, then Tyson is no longer immune from common law liability and principals of ordinary negligence apply, and damages are recoverable for ordinary acts of negligence.

36. Defendants Tyson were negligent for all the reasons set forth in Paragraph 28 hereof, which negligence was a proximate cause of Decedent's infection and death.

COUNT III.

DAMAGES

37. As a proximate result of the Defendants' actions as described herein the Decedent endured pre-death physical and mental pain and suffering as well as loss of function of the mind and body. The Decedent's Estate has suffered damages consisting of a loss to the accumulation of his estate but for his premature death as well as interest and funeral and other burial expenses. In addition the Decedent's three adult children Steven, Michael and Amy have been deprived of the consortium, services, companionship, society and affection of their father.

38. These Plaintiffs' damages exceed the sum of \$10,000.00.

JURY DEMAND

The Plaintiffs request a trial by jury in this matter.

WHEREFORE, these Plaintiffs pray the Court enter judgment for them and against the Defendants and each of them jointly and severally in an amount that would fairly and fully compensate them for their losses and damages together with interest and costs as provided for by law.

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DAN CONNELL, P.C.

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Storm Lake, IA 50588
ATTORNEY FOR PLAINTIFF(S)

AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203437
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Tyson Fresh Meats, Inc. c/o CT Corporation System, Registered Agent			

I, Adam Heater, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Lisa Darrell for Tyson Fresh Meats, Inc. c/o CT Corporation System, Registered Agent, 400 E. Court Ave, Des Moines, IA 50309

Manner of Service: Registered Agent, Dec 31, 2020, 10:38 am CST

Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Served: Dec 31, 2020, 10:38 am CST at 400 E. Court Ave, Des Moines, IA 50309 received by Lisa Darrell for Tyson Fresh Meats, Inc. c/o CT Corporation System, Registered Agent. Age: 55; Ethnicity: Caucasian; Gender: Female; Weight: 125; Height: 5'8"; Hair: Brown;

Subscribed and sworn to before me by the affiant who is personally known to me.

/s/ Adam Heater
Adam Heater

December 31, 2020

Date

Janna Marie Heater
Notary Public
December 31, 2020 *1-4-2022*
Date Commission Expires

Iowa Process Service
1604 Country Club Road
Indianola, IA 50125



AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203510
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Laurie Garcia			

I, Jon Hatfield, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Laurie Garcia, 6764 Canterbury Ct., Sioux City, IA 51106
Manner of Service: Personal/Individual, Dec 31, 2020, 12:19 pm CST
Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Served: Dec 31, 2020, 12:19 pm CST at 6764 Canterbury Ct., Sioux City, IA 51106 received by Laurie Garcia. Age: 49; Ethnicity: Caucasian; Gender: Female; Weight: 160; Height: 5'8"; Hair: Blond;

Subscribed and sworn to before me by the affiant who is personally known to me.

/s/ Jon Hatfield December 31, 2020

 Jon Hatfield Date
 Iowa Process Service
 1604 Country Club Road
 Indianola, IA 50125

Janna Marie Heater

 Notary Public
December 31, 2020 1-4-2022
 Date Commission Expires



AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203474
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Jorge Sandoval			

I, Stacy Newgard, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Jorge Sandoval, 4943 110th Avenue, Rembrandt, IA 50576

Manner of Service: Personal/Individual, Jan 3, 2021, 5:57 pm CST

Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Served: Jan 3, 2021, 5:57 pm CST at 4943 110th Avenue, Rembrandt, IA 50576 received by Jorge Sandoval. Age: 40's; Ethnicity: Hispanic; Gender: Male; Weight: 250; Height: 6'; Hair: Black; Other: Grey in spots in beard.;

Subscribed and sworn to before me by the affiant who is personally known to me.

/s/ Stacy Newgard

January 3, 2021

Stacy Newgard

Date

Janna Marie Heater
Notary Public

January 3, 2021
Date

1-4-2022
Commission Expires

Iowa Process Service
1604 Country Club Road
Indianola, IA 50125



AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203462
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Rick Retzlaff			

I, Jon Hatfield, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Rick Retzlaff, 46293 Robert Penn Lane, Vermillion, SD 57069

Manner of Service: Personal/Individual, Dec 31, 2020, 4:22 pm CST

Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Served: Dec 31, 2020, 4:22 pm CST at 46293 Robert Penn Lane, Vermillion, SD 57069 received by Rick Retzlaff. Age: 55; Ethnicity: Caucasian; Gender: Male; Other: Was sitting on 4 wheeler with a cap on.; Served Rick Retzlaff personally on remote farm at listed address while he was out feeding cattle. He stated he knew that the papers were coming.

/s/ Jon Hatfield January 3, 2021

Jon Hatfield

Date

Iowa Process Service
1604 Country Club Road
Indianola, IA 50125

Subscribed and sworn to before me by the affiant who is personally known to me.

Janna Marie Heater
Notary Public

January 3, 2021 *1-4-2022*
Date Commission Expires



AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203480
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Randy Wiley			

I, Stacy Newgard, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Randy Wiley, 301 Superior St., Storm Lake, IA 50588

Manner of Service: Personal/Individual, Jan 8, 2021, 11:15 am CST

Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Unsuccessful Attempt: Jan 3, 2021, 6:15 pm CST at 301 Superior St., Storm Lake, IA 50588

Lights on, TV on so I could hear it at the front door. I knocked and rang the door bell for approximately 10 mins. I also checked for other doors and only found 1 that was not being used all showed in.

2) Served: Jan 8, 2021, 11:15 am CST at 301 Superior St., Storm Lake, IA 50588 received by Randy Wiley. Age: 62; Ethnicity: Caucasian; Gender: Male; Weight: 160; Height: 6'; Hair: Gray;

Subscribed and sworn to before me by the affiant who is personally known to me.

/s/ Stacy Newgard

January 8, 2021

Stacy Newgard

Date

Iowa Process Service
1604 Country Club Road
Indianola, IA 50125

Janna Marie Heater
Notary Public

January 8, 2021
Date

1-4-2022

Commission Expires



AFFIDAVIT OF SERVICE

Case: LACV033845	Court: Iowa District Court	County: Buena Vista	Job: 5203505
Plaintiff / Petitioner: The Estate of Michael Steven Everhard by Steven Everhard, Executor and Steven Everhard, Michael A. Everhard and Amy Gardner, Individually		Defendant / Respondent: Tyson Foods, Inc., Tyson Fresh Meats, Inc., Rick Retzlaff, Jorge Sandoval, Randy Wiley, Tom Brower and Laurie Garcia	
Received by: Iowa Process Service		For: Hamilton Law Firm, P.C.	
To be served upon: Tom Brower			

I, Bennett Crisp, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

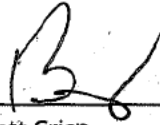
Recipient Name / Address: Jordan Parr for Tom Brower, Home: 124 Crestview Dr, Guyton, GA 31312

Manner of Service: Substitute Service - Abode, Jan 5, 2021, 5:57 pm EST

Documents: Original Notice; Petition at Law and Jury Demand (Received Dec 28, 2020 at 6:15pm CST)

Additional Comments:

1) Served: Jan 5, 2021, 5:57 pm EST at Home: 124 Crestview Dr, Guyton, GA 31312 received by Jordan Parr for Tom Brower. Age: 35; Ethnicity: Caucasian; Gender: Female; Weight: 140; Height: 5'5"; Hair: Blond;

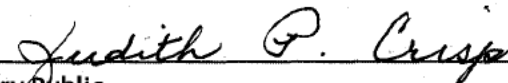


 Bennett Crisp

1/6/21

 Date

Subscribed and sworn to before me by the affiant who is personally known to me.



 Notary Public

1/6/21

 Date

Commission Expires

Iowa Process Service
 1604 Country Club Road
 Indianola, IA 50125

